IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 1147 of 2007 (O&M)

DATE OF DECISION : 24.04.2007

Duni Chand

.... APPELLANT

Versus

Ranjeet Kaur

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Jagdish Manchanda, Advocate,
for the appellant.

Mr. Gorakh Nath, Advocate,
for the caveator-respondent.

This is defendant's Regular Second Appeal against the judgments and decree passed by both the courts below, whereby he has been ordered to be evicted from the shop in dispute, after termination of the tenancy under the Transfer of Property Act by serving a valid notice.

I have heard counsel for the parties and gone through the impugned judgments.

Both the courts below have recorded a finding of fact that the plaintiff-respondent served a due notice under Section 106 of the Transfer of Property Act upon the appellant and the tenancy was terminated. Thereafter, the instant suit was filed.

Counsel for the appellant-defendant does not dispute the aforesaid findings recorded by the courts below. He has raised the only argument that the demised premises is situated within the limits of Municipal Council, Yamuna Nagar, therefore, the civil court has no jurisdiction to entertain the suit. I do not find any merit in this argument. Both the courts below, on the basis of evidence, have recorded a finding of

fact that the demised premises is situated outside the municipal limits. In this regard, the first appellate court has recorded the following findings :-

> "The plaintiff as PW1 in her affidavit Ex.PW1/A stated that the disputed shop is situated out side the limits of Municipal Committee and the same falls in the area of village Farakpur. PW2 Inder Singh Patwari, Municipal Council, Yamuna Nagar proved the certificate Ex.P6, according to which the disputed shop is situated within the revenue estate of village Sasouli near Farakpur Railway Crossing near abadi of village and the same is out side the limits of Municipal Council, Yamuna Nagar. Neither the plaintiff nor PW2 Inder Singh Patwari was suggested during cross examination that there is separate Municipal Committee, Jagadhri Railway workshop and disputed shop is situated within the limits of that municipal committee. The defendant/appellant in his affidavit Ex.DW1/A stated that the disputed shop is situated at Farakpur. He did not state that the disputed shop is situated within the limits of Municipal Committee, Jagadhri Railway workshop. He stated during cross examination that the disputed shop is within the limits of Farakpur Panchayat and in the area of village Sasouli. DW2 Manohar Lal also stated that the disputed shop is within the area of village Sasouli and that area is known as Farakpur. DW3 Roop Lal also stated that the disputed shop is situated within the area of Farakpur. Thus, from the oral as well as documentary evidence on record, it is established that the disputed shop is situated within the revenue estate of village Sasouli in the area of village Farakpur near Jagadhri Railway crossing and the same does not fall within the Municipal limits of Municipal Council, Yamuna Nagar or Municipal Committee, Jagadhri."

The aforesaid finding of fact has been recorded on the basis of evidence available on the record and even on the basis of the admission of the witnesses examined by the appellant-defendant as well as by considering his affidavit. I do not find any ground to interfere in the said finding of fact. No substantial question of law is involved in the appeal.

Dismissed.

April 24, 2007 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**